

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

COMMON CAUSE / GEORGIA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION FILE
	)	NO. 4:05-CV-201-HLM
MS. EVON BILLUPS, Superintendent of	)	
Elections for the Board of Elections and	)	
Voter Registration for Floyd County and	)	
the City of Rome, Georgia, et al.,	)	
	)	
Defendants.	)	
	)	
and	)	
	)	
STATE ELECTION BOARD,	)	
	)	
Intervenor.	)	

**PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE COMPLAINT TO  
ADD PLAINTIFFS AND TO REFLECT THE SUBSTITUTION OF A  
DEFENDANT AND MEMORANDUM IN SUPPORT**

Pursuant to Federal Rules of Civil Procedure 15, 21 and 25 and Local Rule 15.1, the plaintiffs respectfully move the Court to permit the plaintiffs to amend their complaint to add certain new plaintiffs, and to reflect the substitution of Georgia's newly-elected Secretary of State as a defendant. The proposed amendment to the plaintiffs' complaint is attached hereto as Exhibit A.

In support of this motion, the plaintiffs show the court as follows:

### **Memorandum In Support of Motion**

Federal Rule of Civil Procedure 15(a) requires that leave to amend a complaint “be freely given if justice so requires.” Fed.R.Civ.P. 15(a). In addition, Rule 21 states that “Parties may be ... added by order of the Court on motion of any party or of its own motion at any stage of the action and on such terms as are just.” Fed.R.Civ P. 21.

On September 28, 2006, this Court stayed all proceedings in this case pending a ruling by the Georgia Supreme Court with regard to the constitutionality under the Georgia Constitution of the statute challenged in this case. On June 11, 2007, without addressing the merits of the statute’s constitutionality, the Georgia Supreme Court issued an opinion ruling that the plaintiff in the state case did not have standing. *Perdue v. Lake*, 647 S.E.2d 6 (Ga. 2007). Surprisingly, the Georgia Supreme Court also ruled that a card issued by the Metropolitan Atlanta Rapid Transit Authority (MARTA) would be sufficient to satisfy the statute. *See Id.* (page unavailable).<sup>1</sup> On July 27, 2007, the Court denied Ms. Lake’s motion for reconsideration.

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<sup>1</sup> This decision was surprising in light of the fact that even the State did not argue on appeal that Ms. Lake’s MARTA card satisfied the statute. Further, the holding is inconsistent with the statute’s requirement that an ID is only sufficient if it is “issued by a branch, department, agency, or entity of the State of Georgia.” O.C.G.A. § 21-2-417(a)(2). Prior to the ruling in the *Lake* case, the Georgia

Based on this ruling, the remaining individual plaintiff Clara Williams lacks standing because she has a MARTA card.<sup>2</sup> While the organizational plaintiffs have standing and remain parties to this action, the two individuals listed in the amendment wish to be added as plaintiffs in order to vindicate their rights that are violated by the 2006 Photo ID Act (and the rights of thousands of similarly situated individuals throughout the State).

In addition to the new individual plaintiffs, the plaintiffs' proposed amendment would reflect the substitution of Karen Handel, the newly-elected Georgia Secretary of State, for former defendant Cathy Cox, who left her position as the Secretary of State in January of 2007. Despite the fact that the plaintiffs' suit is brought pursuant to *Ex Parte Young*, and thus against Ms. Handel in both her official and individual capacities, Eleventh Circuit precedent dictates that this substitution occurred automatically under the provisions Federal Rule of Civil

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Courts had uniformly held that MARTA, as a local agency, was not an entity of the State. *See, e.g., Brooks-Powers v. Metropolitan Atlanta Rapid Transit Authority*, 260 Ga.App. 390, 391 (2003) (concluding that "by law" MARTA is a "local public authority"); *Williams v. MARTA*, 247 Ga.App. 52 (2000) ("MARTA is a local authority"); *Johnson v. Metropolitan Atlanta Rapid Transit Authority*, 207 Ga.App. 86, 871 & 873 (1993) (finding that MARTA's Board of Ethics is a "local governmental agency, board, authority, or entity" and stating that "MARTA is not a state agency."); *see also, Holmes v. Chatham Area Transit Authority*, 234 Ga.App. 42 (1998) (holding that a "local government [transit] authority" is not an "entity" or "instrumentality of the State").

<sup>2</sup> The other individual plaintiff who instituted this action decided to withdraw when the State sought to take his deposition.

Procedure 25(d)(1). *See ACLU of Mississippi, Inc. v. Finch*, 638 F.2d 1336, 1342 (5th Cir. 1981) (stating that “there is no logical reason why a suit against a government official may not be against him in his personal capacity within the meaning of *Ex Parte Young*, and yet still be ‘official’ enough to require automatic substitution under Appellate Rule 43(c)(1) and Civil Rule 25(d)(1),” and holding that the procedural rules automatically bring individual successors before the court “in both their individual and official capacities within the meaning of [*Young*]”).<sup>3</sup>

The state defendants have consented to Karen Handel’s substitution, but they have refused to consent to the addition of the individual plaintiffs. After the stay was lifted, plaintiffs’ counsel made clear to the state defendants that new individual plaintiffs would be added, and the new individuals were identified to the state defendants on Monday, August 13.

### **Conclusion**

For all of the above reasons, plaintiffs respectfully request that the Court (1) grant them leave to amend their complaint, and (2) consider the amendment attached hereto as Exhibit A to be filed.

This 13<sup>th</sup> day of August, 2007.

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<sup>3</sup> Through this motion, the plaintiffs do ***not*** seek to resuscitate any claims in their Second Amended Complaint relating to the 2005 Act, as those claims were dismissed by the Court in its June 29, 2006 Order. This motion, thus, would have no impact on that decision by the Court.

Respectfully submitted,

/s/ David G.H. Brackett

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(D), I certify that this Motion complies with the font and point selections set forth in Local Rule 5.1B. This Motion has been prepared using Times New Roman font (14 point).

/s/ David G.H. Brackett  
David G.H. Brackett  
Georgia Bar No. 068353

**CERTIFICATE OF SERVICE**

I, David G.H. Brackett, do hereby certify that I have this day electronically filed the foregoing **PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDMENT TO SECOND AMENDED COMPLAINT, AND MEMORANDUM IN SUPPORT**, with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to opposing counsel as follows:

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This 13<sup>th</sup> day of August 2007.

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